U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 28 October 2005

CASE NO. 2005-LHC-00175

OWCP NO. 01-141141

In the Matter of

HAROLD E. CHIEKA
Claimant

v.

ELECTRIC BOAT CORPORATION
Employer/Self-Insured

Appearances:

Gerard R. Rucci, Esq., Law Office of Gerard R. Rucci,
New London, Connecticut, on behalf of the Claimant

Edward W. Murphy, Esq., Morrison, Mahoney & Miller, LLP,
Boston, Massachusetts, on behalf of the Employer/Self-Insurer

BEFORE: Daniel F. Sutton
Administrative Law Judge

DECISION AND ORDER AWARDING BENEFITS

I. Statement of the Case

This proceeding arises from a claim for workers' compensation benefits filed by Harold Chieka (the "Claimant") against the Electric Boat Corporation ("EB" or "Employer"), under the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901 *et seq.* (the "LHWCA" or the "Act"). After an informal conference before the District Director of the Department of Labor's Office of Workers' Compensation Programs ("OWCP"), the matter was referred to the Office of Administrative Law Judges for a formal hearing pursuant to section 19(d) of the LHWCA. 33 U.S.C. § 919(d).

The formal hearing was conducted on March 31, 2005 in New London, Connecticut. At the hearing the parties were afforded the opportunity to present evidence and oral argument. The Claimant appeared at the hearing represented by counsel, and an appearance was made by

counsel for the Employer/Self-Insured. The parties offered stipulations, and testimony was heard from the Claimant and his physician, Samuel Pearce Browning, III, M.D. The hearing transcript is referred to as "TR." Documentary evidence was admitted as Claimant's Exhibits ("CX") A-H, Employer's Exhibits ("EX") 1-5, and Joint Exhibit ("JX") 1. TR 28-34.[1] The official papers were admitted without objection as ALJ Exhibits ("ALJX") 1-8. *Id.* at 5-7. Following the hearing, the parties filed post-hearing briefs, and the record is now closed.

After careful analysis of the evidence contained in the record and the testimony offered, I conclude that the Claimant is entitled to compensation for his work-related permanent total disability for the period of May 19, 2004 to October 31, 2004, as well as permanent partial disability compensation from November 1, 2004 onward. I further find that Electric Boat is entitled to a credit based on overpayment to the Claimant. My findings of fact and conclusions of law are set forth below.

II. Findings of Facts and Conclusions of Law

A. Stipulations and Issues Presented

The parties stipulated to the following: (1) the Longshore and Harbor Workers' Compensation Act applies to the claim; (2) the injury occurred on June 23, 1997; (3) the injury occurred in Groton, Connecticut; (4) the injury arose out of and in the course of the Claimant's employment with Electric Boat; (5) an employer/employee relationship existed at the time of the injury; (6) the Employer was notified of the injury on a timely basis and the claim for benefits was timely filed and controverted; (7) the informal conference was held on October 13, 2004; (8) the average weekly wage at the time of injury was $889.15; (9) the Claimant has been paid for temporary total disability first for a period from June 30, 1997 to September 17, 1998, and then for a period of May 19, 2003 to September 1, 2003; for permanent partial disability for a period from October 25, 1999 to March 3, 2000; an advance payment under the State Act on February 28, 2001 in the amount of $4000.00; and payments for permanent partial disability until February 6, 2005 in the amount of $619.90 per week; (10) the Claimant's medical benefits have been paid; (11) The Claimant reached maximum medical improvement on May 19, 2004; (12) the Claimant has not returned to his usual job; (13) the Claimant has engaged in alternative employment from January 1, 1998 to October 31, 2004 for minimal compensation and from November 1, 2004 to the present; (14) the Claimant has an earning capacity of $422.00 weekly; and (15) Electric Boat is due a credit arising from the overpayment of benefits to the Claimant. TR 20-27; JX 1.

The issues in dispute are (1) whether the Claimant can establish that he remains disabled from his usual employment; (2) whether the Claimant is entitled to disability benefits from May 19, 2004 to the present and continuing; (3) whether the Claimant is precluded from recovery due to his post-injury layoff; and (4) whether the Claimant is precluded from receiving further benefits concurrently with permanent partial disability compensation payments that he received until February 6, 2005 for the 24 percent impairment of his arms and hands.

[1] The Employer objected to the Claimant's Exhibits to the extent that they offer evidence regarding the Claimant's hand and arm disability which is not the subject of this claim. I find that the Claimant may offer evidence about his physical condition as a whole as it relates to his ability to perform alternate employment. Therefore, as the evidence is relevant, the Employer's objection is overruled. 20 C.F.R. § 702.338 (2004).

B. The Claimant's Testimony

The Claimant was born in 1958, and began working at EB in August of 1977. TR 58. During his employment at EB, the Claimant worked as tank tester in Department 227, which is the chipper/grinder/tank test department. TR 58-59, 77. The Claimant testified that he was a tank tester for most of the twenty years that he worked at EB, and was a grinder for approximately two to four years of that time. TR 67. Although the Claimant's tank testing duties were typical work performed by testers in EB's Shipyard Test Organization ("STO"), his assignment to the chipper/grinder/tank test department meant that EB could and did move him back and forth between the tank testing functions and the grinding functions throughout his employment. TR 59, 77, 79.

As a tank tester, the Claimant's role was to test the strength and tightness of the tanks and check for leaks, which involved pressurizing tanks and spraying or painting them with a salt solution or filling the tanks with water. TR 67. His duties as a tester often required that he crawl into the tanks. TR 69. In addition, the Claimant stated that some grinding is required in the role of tank tester because if in the course of tank testing a weld leak is found, the tester is responsible for grinding that weld to fix the problem. TR 69, 71-72. Grinding requires the use of air-driven grinding tools that must be operated with two hands, and grinding work may last anywhere from a couple of minutes to an entire shift, depending on the task at hand. TR 70, 92-93. The Claimant testified that as a tank tester he would grind "now and then" but never for an extended period of time. TR 67.

During his employment at EB, the Claimant injured his right and left hands and elbows in 1996, as well as his back. TR 64-65. The Claimant testified that he has had 12 surgeries on his hands and arms as a result of his injuries. TR 65. He returned to work after the surgeries, and testified that his hands and arms would "always cramp up" and he had "a lot of tingling" as well as "lock up pain" as a result of his work. *Id*. His physician, Dr. Thomas Cherry determined that he had a 24 percent disability rating for his hands and arms. TR 85. The Claimant received disability payments for the 24 percent rating in connection with his hand and arm condition, which continued through February 6, 2005. TR 84; JX 1; EX 1.

On June 23, 1997, the Claimant sustained a work-related injury when he struck his shoulder on a hanger, and he left work as a result of the injury. TR 60; CX D at 13. Subsequent to his shoulder injury, he was laid off from Electric Boat on August 15, 1997. TR 88. The Claimant had two operations on his shoulder and was paid while he was out of work recuperating. TR 62. The first operation was performed by Dr. Giacchetto in 1997, and the second was performed by Dr. Joyce in 2003. TR 62-63. The Claimant saw Dr. Joyce approximately eight to ten times during the course of his treatment, seeing him for the last time in May 2004. TR 81. The Claimant testified that Dr. Joyce has the most familiarity with his right shoulder condition of any physician. TR 82.

In May 2004, Dr. Joyce prescribed restrictions for the Claimant which stated that he could perform work classified as "heavy" by the U.S. Department of Labor's Dictionary of Occupational Titles, with the exception of lifting greater than 30 pounds overhead with the right

upper extremity and repetitive lifting below the shoulder of greater than 80 pounds. TR 82; CX C at 3. The Claimant testified that in May 2004, his shoulder was 80 to 90 percent of what it had been prior to the injury and his pain felt "a lot better." TR 81. On May 19, 2004, Dr. Joyce stated in his records that the Claimant could return to work with some restrictions. TR 63.

Between May and August of 2004, the Claimant helped family and friends by doing some painting work and floor installation. TR 91. The Claimant was not paid but testified that this type of work would generally pay approximately $12.00 to $15.00 per hour on the open labor market. TR 91-92. In the first week of November, the Claimant began working as a painter for a building company. TR 63-64. As a painter, he was required to paint indoors and outdoors and stand on his feet all day, however he was able to alternate the use of his hands for equal amounts of time during his work. TR 85-87. He was paid an hourly rate of $15.00, and worked between 35 and 40 hours a week. TR 64. He was laid off from his painting job on February 11, 2005 for lack of work, but anticipates returning to this job when the workload increases. TR 64, 85. He testified that he was able to perform his job as a painter effectively. TR 90. He has not seen Dr. Joyce or any physician for his shoulder condition since May 2004, and takes only over-the-counter pain medication. TR 87-88.

Based solely on his shoulder injury, and not the condition of his hands or arms, the Claimant testified that he does not feel that he could return to a job as a grinder, as he could not grind overhead with his shoulder condition. TR 83. He testified that the heaviest grinding machine that might be used overhead, a "whirlybird" grinder, weighs between 20 and 30 pounds. TR 93. He said that he could not hold a whirlybird grinder over his head for any length of time because his "shoulder wouldn't do it." TR 80. The Claimant testified that although the weight of the whirlybird falls within his overhead lifting restrictions, operation of the grinder requires the application of additional pressure which he could not do. TR 83-84.

C. Testimony of Ronald Donovan

Ronald Donovan testified at a deposition that he has worked for EB for 32 years, beginning in 1973. EX 5 at 6-7. He is currently the Superintendent of the steel trades, and has been in that position for approximately 14 years. *Id*. at 6. Prior to his current position, he was an Assistant Superintendent of the steel trades for approximately five to eight years, was a General Foreman in the steel trades for approximately five years, was a Foreman in the welding department for three to five years, and was an Apprentice Welder prior to that. *Id*. at 6-7. As Superintendent, his main responsibility is to oversee the workers in the steel trade department, including shipfitters, welders, grinders, lead bonders, and sheet metal workers. *Id*. at 8. He is responsible for making sure that the work for the employees in his department is planned properly, which entails reviewing the schedule, designating employees to perform the available work, and ensuring that the foremen have enough employees to do the job. *Id*. at 8-9. He is also responsible for departmental safety, managing quality and costs, scheduling, and implementing process improvements. *Id*. at 8. According to Mr. Donovan, the Claimant, in his last job with EB, worked for the Test Department performing the function of a tank tester. *Id*. at 9. The Claimant's official job title was chipper/grinder/tank tester, which is typical of someone who worked in the grinding department in 1997. *Id*. at 28. The individuals who performed grinding functions and tank testing functions all essentially carried the title of chipper/grinder/tank tester

rather than just one of those designations. *Id*. Mr. Donovan testified that the company could require the Claimant to perform different functions at any given time. *Id*. Although Mr. Donovan is responsible for supervising the grinding department, he testified that the Claimant's job was not within the purview of his supervision, as it fell within the supervision of the Manager of the Test Department, Michael Ross. *Id*. at 10, 14. Mr. Donovan testified that he only occasionally sees employees who work in the Test Department, and he has not had the opportunity to analyze the job of a tank tester or read a job description for the tank tester position. *Id*. at 11-12.

Mr. Donovan testified that in 1997, the duties and responsibilities of a grinder were to prepare welds using pneumatic tools, grind back gouges, prepare bevels, and prepare steel after it was burnt using pneumatic tools. *Id*. at 17. He said the physical tasks of the grinder position today are the same as they were in 1997, and the physical demands of the job include working in tight areas, working overhead, and working in hot, cramped spaces. *Id*. at 21, 27. Pursuant to the job description, sitting, walking, bending, squatting, crawling, climbing, kneeling, and twisting are occasionally required, and standing is required constantly. *Id*. at 23; CX G at 2. Reaching above the shoulder is occasionally required and hand dexterity and actual usage are constantly required. *Id*. Further, the physical activity level and stress are constant. EX 5 at 24; CX G at 2. Mr. Donovan testified that the grinding machines do not weigh more than 20 pounds and, while there are toolboxes or bags that may weigh more than 20 pounds, it is not a requirement that that amount of weight be carried. EX 5 at 25-26.

After reviewing the Claimant's medical records and reading Dr. Joyce's medical report and restrictions, Mr. Donovan testified that the Claimant's restrictions could have been accommodated in 1997 because grinders are not expected to lift weight below the shoulder greater than 80 pounds and are also not expected to lift any weight over 30 pounds. EX 5 at 15, 18-19. He further stated that the job description requires lifting less than 20 pounds and pushing/pulling less than 25 pounds, which are within the Claimant's restrictions. CX G at 2. Therefore, Mr. Donovan concluded that given Dr. Joyce's restrictions, the Claimant could perform the job of a grinder. EX 5 at 27.

D. Testimony of Michael Ross

Mr. Ross testified at a deposition that he has worked at EB for approximately 28 years and is currently the Manager of the Test Department, supervising 192 people. CX H at 6. Prior to becoming a manager in 2001, he was a Chief Test Engineer for 11 years, supervising approximately 35 people. *Id*. at 6-7, 13-14. Prior to that, he was the Assistant Chief Test Engineer for two years and supervised approximately 30 people. *Id*. at 12-13. Before becoming Assistant Chief Test Engineer, he was a Test Foreman for two years, and supervised 15-20 tank test technicians, and prior to that he was a test technician. *Id*. at 7, 9. He testified that a test technician conducts operational testing by pressurizing tanks to ensure that they are air and water tight, calibrates gauges to ensure accuracy, and runs air, water, and bilge hoses to and from the ships. *Id*. at 8-11. The test technician job falls within Department 272, which is the Shipyard Test Organization ("STO"). *Id*. at 9.

According to Mr. Ross, the Claimant was a tank tester, whose job entailed working for

the STO when there was tank testing work to be done, performing tests and rigging air hoses and air manifolds into the ship. *Id*. at 17. Mr. Ross testified that the STO routinely borrowed individuals, such as the Claimant, from the grinder/chipper department to assist in tank testing. *Id*. However, he stated that if the STO did not have any work for individuals from the grinder/chipper department at any given time, those individuals would perform grinding work. *Id*. at 17, 31-32. Mr. Ross stated that he does not recall the Claimant functioning as a grinder, but does recall him as a tank tester. *Id.* at 17. Mr. Ross testified that there is only one tank tester employed at this time because the STO is taking over the duties previously performed by tank testers. *Id*. at 22-23.

Mr. Ross testified that the tank tester job is completely different than the STO test technician position, as tank testers do not work on ship system operations as test technicians do; rather the tank testers just "hydro" tanks, run hoses to air manifolds, and supply trade work on the ships. *Id*. at 18. "Hydroing" a tank is testing whether it is air and water tight and involves pressurizing the tank, installing blanks, which can weigh anywhere from two ounces to 150 pounds, carrying pumps to the ship which can weigh as much as 50 pounds, and bringing hoses on and off the ship. *Id*. at 18-20. Objects weighing in excess of one hundred pounds are required to be brought on board approximately once every three months. *Id*. at 27. Heavy items may be lifted by individuals or brought on board by crane, but in no case would it be required for any one individual alone to carry a one hundred pound object from the shipyard onto a vessel. *Id*. at 27-28. The hoses can range in length from 20 to 50 feet and can weigh up to 60 pounds. *Id*. at 20. Hoses are brought on the boat using a rigger if one is available, or are manually carried aboard on the shoulder. *Id*. at 21.

Mr. Ross opined that the physical requirements of a tank tester are not any different than the requirements of the STO test technician. *Id*. at 23-24. The job description of the STO test technician describes the position as "very physical . . . requiring climbing, carrying of hoses and pumps throughout the shipyard and boats, and crawling, bending, etc." CX G at 1. It also requires constant reaching above shoulder and occasional hand dexterity and tool usage. *Id*. at 1. The lifting requirements are no more than 50 pounds and the pushing/pulling requirements are no more than 75 pounds. *Id*. at 1. Mr. Ross read the Claimant's medical records from Dr. Joyce and Dr. Gaccione, including the restrictions and limitations on the Claimant's work activity. CX H at 15. Mr. Ross testified that given the Claimant's restrictions, the Claimant could not perform the duties of the STO test technician or the tank tester position as it existed in 1997. *Id*. at 25. He stated that the amount of lifting and pulling of hoses and carrying of pumps and air manifolds is very demanding on an individual, and that he would be hesitant to put the Claimant in a position in which he could be injured further or re-injured. *Id*. at 25.

E. Medical Records and Testimony of Samuel Pearce Browning, III, M.D.

Samuel Pearce Browning, III, M.D. is an orthopedic surgeon who first treated the Claimant in January, 1973 for a strained right shoulder, again for a back injury sustained at Electric Boat in 1982, and then for the shoulder injury that occurred on June 23, 1997. TR 37, 44. Dr. Browning has also followed the Claimant's treatment with Dr. Cherry for multiple conditions in his upper extremities, and has reviewed Dr. Cherry's records as well as the independent medical exam conducted by Dr. Wainwright. TR 38. He last evaluated the

Claimant on October 30, 2002 and referred him to Dr. Joyce at that time because his shoulder was continuing to bother him. TR 46.

Dr. Browning's records reflect that he examined the Claimant on June 30, 1997 regarding his work-related shoulder injury. CX A at 13. He noted that the Claimant's right shoulder was bothering him after he hit it on a hanger. *Id*. at 13. He opined that the x-rays did not show a fracture, however there may have been a slight subluxation and sprain at the AC joint. *Id*. at 13. Dr. Browning completed a Statement of Disability on November 4, 1997, which states that the Claimant is totally disabled and is incapable of performing "regular work duties" or any other work due to his right shoulder injury that occurred on June 23, 1997. CX A at 11. A second Statement of Disability signed on April 13, 1998 states that the Claimant is totally disabled and is incapable of performing "regular duties" or any other work due to his right shoulder injury that occurred on June 23, 1997. *Id*. at 10. A third Statement of Disability was signed by Dr. Browning on February 23, 1999, and states that the Claimant is totally disabled from the right shoulder injury that occurred on June 23, 1997. *Id*. at 3.

Dr. Browning testified that the Claimant has had multiple instances of epicondylitis, or tennis elbow, in both elbows and problems with the nerves at the elbows and at the wrists. TR 38. He has had multiple operations to decompress and transfer nerves at the elbows and at the wrists and has had formal carpal tunnel release at both of the median nerves of both wrists. TR 38. Dr. Browning testified that he has been treating grinders from EB since 1962 and the job duties and requirements have been described to him by the grinders that he has treated. TR 38. According to Dr. Browning, his understanding is that the grinders use air-powered grinding devices that are held with both hands to grind on boats, inside tanks, or in the shop, and grind pieces of metal to a certain size and shape for an average of four hours out of an eight hour shift. TR 41. Dr. Browning opined that based on the condition of his arms and hands, the Claimant should be restricted from heavy repetitive work and that he should not use air-driven grinding or vibrating tools at all now or in the future, as doing so will cause further damage to his hands. TR 42. Dr. Browning further testified that it is his opinion that no one who has undergone carpal tunnel release surgery, as the Claimant has, should ever use an air driven grinding tool. TR 43.

Prior to the Claimant's shoulder injury in June of 1997, Dr. Browning testified that there were no formal written restrictions regarding the Claimant's hands or arms. *Id*. at 46. He testified that he did not mention the Claimant's arms or hands in office notes from June 30, 1997 and October 8, 1997 because at that time he was focused on the Claimant's shoulder injury. TR 48-49. Dr. Browning opined that after the June 23, 1997 injury, the Claimant would have had a great deal of difficulty as a tank tester because he had a partial dislocation of his chromyl clavicular joint which would have limited his ability to crawl. TR 48. Dr. Browning asserts that he did not give the Claimant written restrictions for his hands when he saw him in 1997, because he was totally disabled at the time as a result of his shoulder injury, and at that time he was working as a tank tester and was not grinding. TR 55.

Dr. Browning stated that Dr. Cherry's records from August 22, 1996 indicate that the Claimant experienced symptoms in his hands such as burning discomfort, tingling and numbness which may be elicited upon contact with vibrating tools, such as a grinder, and this type of contact will result in the symptom complex developing in a matter of seconds. TR 42. Dr.

Browning also noted that in an entry dated January 11, 1999, Dr. Cherry stated that even though the Claimant's hands and arms had recovered to a point where he was released to light to moderate work at his previous job, he would be permanently enjoined from using grinders, burr machines, and other vibratory tools other than for a very brief period of one to two minutes at a time, and no more than two to three times in a given hour during the course of a work day. TR 43. Dr. Browning additionally noted that Dr. Wainwright, in the report of his independent medical evaluation performed on April 9, 2002, stated that the Claimant should have ongoing work restrictions including a restriction against heavy, repetitive use of the hands. TR 43. Based on the medical records of Dr. Cherry and Dr. Wainwright, Dr. Browning concluded that these physicians are in agreement that the Claimant should not use air-driven tools. *Id*. at 43.

F. Additional Medical Evidence

Thomas Cherry, M.D. began treating the Claimant on August 22, 1996 for a hand condition that caused burning discomfort, tingling and numbness which occurred primarily at night. CX E at 45-46. Dr. Cherry diagnosed this condition as likely carpal tunnel syndrome arising out of the Claimant's work. *Id*. Further, he noted that the Claimant had an ongoing, relatively mild lateral epicondylitis or tennis elbow on the left side. *Id*. at 45. On February 9, 1998, the Claimant was again seen by Dr. Cherry because the lateral epicondylitis had become progressively worse, and the Claimant experienced a constant sense of numbness in the left small finger, which again was diagnosed by Dr. Cherry as carpal tunnel syndrome. *Id*. at 42. The Claimant was reevaluated on April 6, 1998 and Dr. Cherry noted that the Claimant's elbow condition was as bad as or worse than ever and decided to proceed with hand and elbow surgery which was performed on May 8, 1998. *Id*. at 41. Dr. Cherry saw the Claimant at least through February 4, 2002 when he stated that the Claimant was at maximum medical improvement ("MMI"), and he provided a 24 percent permanent partial disability rating to both the left and right upper extremities. *Id*. at 1.

John J. Giacchetto, M.D. saw the Claimant on referral from Dr. Browning for evaluation of his right shoulder condition on October 1, 1997. CX D at 13. Dr. Giacchetto noted that on June 23, 1997 the Claimant struck the back of his neck and upper right shoulder on a hanger, which was followed by acute pain. *Id*. A cervical MRI scan showed some cervical disc disease, and an MRI of his right shoulder suggested an AC joint problem. *Id*. At the time, the Claimant complained of pain localized to the superior aspect of the right shoulder, accompanied by neck pain and stiffness with occasional radiation of pain down the upper arm. *Id*. Dr. Giacchetto performed surgery on the Claimant on November 20, 1997 for excision of the right distal clavicle and limited subacromial decompression. *Id*. at 9. Dr. Giacchetto saw him in 1998, five months after the surgery and stated that "over the past few to several months [the Claimant] has been noticing increasing anterior shoulder pain. Now he is having some pain at rest." *Id*. at 1. His conclusion was that the Claimant had a subcoracoid impingement in the right shoulder and a progression of his work-related AC joint arthrosis. *Id*. at 1. In exam notes dated April 22, 1998, Dr. Giacchetto stated that the Claimant "seems to be progressing well relative to the shoulder surgery", but "he has multiple other compensable injuries for which he remains fully disabled." *Id*. at 2. He then stated that he would defer management of the Claimant's work status to Dr. Browning who was coordinating his care. *Id*. at 2.

On April 9, 2002, William A. Wainwright, M.D., conducted an independent medical examination of the Claimant. CX F at 1. He reviewed prior medical records and reports, as well as an MRI. *Id*. at 1-3. Dr. Wainwright reported that the Claimant complained of spasms primarily in his left hand, pain in his elbows, tingling of the palms that became worse with use, and that wrist flexed activities, such as driving, caused cramping and locking in the hands and elbows. *Id*. at 3-4. He opined that the rating assigned by Dr. Cherry of 24 percent in each hand was reasonable. *Id*. at 4. Dr. Wainwright stated that "these injuries do appear to be work-related and related to the use of his hands while employed at Electric Boat" and that the Claimant "should have ongoing work restrictions and be restricted from heavy repetitive use of the hands." CX F at 5.

Records from Michael Joyce, M.D., an orthopedic surgeon, indicate that he evaluated the Claimant on February 26, 2003 for complaints of right shoulder pain. CX C at 1. He stated that the Claimant had an "anterior healed incision from his AC resection but a positive impingement and circumduction test and weakness in the rotator cuff . . . with a hooked acromion notes as well." *Id*. at 1. Dr. Joyce revaluated the Claimant on April 17, 2003 and reported that a MRI study revealed a tear of the rotator cuff at the supraspinatus insertion and evidence of significant impingement. *Id*. at 2. Based on the findings, Dr. Joyce recommended surgery. *Id*. On May 19, 2003, the Claimant underwent a right shoulder arthroscopic subacromial decompression and arthroscopic rotator cuff repair. *Id*. Dr. Joyce stated that the Claimant was seen on a regular basis for follow-up appointments and "made continued progress up until December 3, 2003 at six months post-op where he said he was about 80 percent to 90 percent back to normal and was doing vigorous activities." *Id*. at 2. On August 29, 2003, Dr. Joyce signed a treatment/restriction report stating that the Claimant could return to his regular job for the next scheduled shift on September 2, 2003. *Id*. at 6. He further indicated that the Claimant was not fully recovered, and that the expected date of MMI was May 2004. *Id*. at 6. On December 3, 2003, Dr. Joyce stated that based on his examination, the Claimant "can be released to all activities without restrictions. Specifically there are no restrictions on lifting, pushing or pulling because of his shoulder injury." *Id*. at 4. Also on that date, Dr. Joyce signed a treatment/restriction report stating that the Claimant could return to his regular job for the next scheduled shift on December 4, 2003. *Id*. at 5. Again, he indicated that the Claimant was not fully recovered, and that the expected date of MMI was May 2004. *Id*. at 5. Dr. Joyce performed a permanent impairment evaluation of the Claimant on May 19, 2004. *Id*. at 1. At that time, he concluded that the Claimant had reached maximum medical improvement, and he stated that he did not expect any further recovery or restoration of function. *Id*. at 1-2. As of the date of evaluation, Dr. Joyce reported that the Claimant stated that his shoulder was about "80 percent to 90 percent better" and the Claimant "pretty much does everything he wants to do." *Id*. at 2. He stated that the Claimant has pain with prolonged overhead activities such as working on the ceiling, but "does fairly well" with activities below the shoulder level, although he is a little achy at night from time to time. *Id*. He stated that the Claimant's prognosis was good, and he did not expect any need for additional therapy or surgery. *Id*. He assigned him a six percent impairment rating for his rotator cuff injury and a ten percent impairment for his distal clavicle resection for a combined 16 percent impairment to the right upper extremity. *Id*. He stated that the Claimant "can perform work assigned as heavy by the U.S. Department of Labor Dictionary of Occupational Titles with the only exception of lifting greater than 30 pounds overhead with the upper extremity and repetitive lifting below shoulder level of greater than 80 pounds." *Id*. at 3.

Daniel R. Gaccione, M.D. performed an independent medical examination on August 19, 2004. CX B at 1. His report is based on an evaluation of the Claimant as well as a review of multiple medical records and other independent medical examinations. *Id*. at 1. Dr. Gaccione diagnosed the Claimant with right shoulder impingement syndrome secondary to acromioclavicular joint dysfunction and associated rotator cuff tear which has been surgically treated. *Id*. at 3. Further, he stated that the prognosis at the time was good. *Id*. He noted that there is a causal relationship between the injury that the Claimant sustained on June 23, 1997 and his resultant shoulder condition. *Id*. He opined that the Claimant has reached maximum medical improvement from the injury and subsequent surgical procedures. *Id*. He concluded that the Claimant has sustained an impairment of the upper extremity of 15 percent, which is fully apportioned to the June 23, 1997 injury. *Id*. This rating is based on a 10 percent impairment of the upper extremity secondary to his distal clavicle excision and an additional 5 percent impairment assigned based on range of motion loss. *Id*. Dr. Gaccione stated that the Claimant was capable of carrying out work duties at that time as long as they involved restrictions limiting lifting to 25 pounds with no pulling or pushing greater than 50 pounds. *Id*. He opined that there should also be limitations regarding overhead work in addition to climbing and crawling. *Id*. He stated that if these limitations were within the scope of the Claimant's prior employment, the Claimant would be considered to be capable of full duty. *Id*. If not, however, the Claimant's employment would require restrictions in line with those noted above. *Id*.

G. Nature and Extent of Disability

The parties have stipulated that the Claimant sustained a work-related shoulder injury on June 23, 1997 and that he currently has a wage-earning capacity of $422.00 per week based on the painting employment that he commenced on November 1, 2004. The Claimant seeks an award of (1) permanent total disability compensation from May 19, 2004, the date of maximum medical improvement from his shoulder injury, to November 1, 2004 when he commenced alternate employment and (2) permanent partial disability compensation from November 1, 2004 based on the difference between his pre-injury average weekly wages and his current earning capacity of $422.00 per week.

EB raises multiple defenses to the claim for disability compensation after May 19, 2004. It first contends that the Claimant is no longer disabled because he could return to his usual employment in the grinder/chipper department. Alternatively, it asserts that the Claimant's work for relatives demonstrates that suitable alternative employment was available and that he had a wage-earning capacity prior to November 1, 2004. EB further argues that since the Claimant's job was eliminated as part of an economic layoff in 1997, he should be barred from recovering disability compensation because his loss of earnings is not due to any work-related injury. Finally, EB argues that even if the Claimant is found to be entitled to disability compensation after May 19, 2004, he cannot receive any additional compensation for the period of May 19, 2004 through February 6, 2005 because he already received permanent partial disability compensation payments for this period at the maximum allowable two-thirds compensation rate.

The LHWCA defines disability as an "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment . . .

." 33 U.S.C. § 902(10). Disability under the LHWCA involves "two independent areas of analysis -- nature (or duration) of disability and degree of disability." *Stevens v. Director, OWCP*, 909 F.2d 1256, 1259 (9th Cir.1990), *cert. denied*, 498 U.S. 1073 (1991). The burden of establishing the nature and extent of disability as a result of his work-related shoulder injury rests with the Claimant. *Trask v. Lockheed Shipbuilding Construction Co.*, 17 BRBS 56, 59 (1985).

1. Nature of Disability

There are two approaches to determine the nature of a disability. The first "approach for determining whether an injury is permanent or temporary is to ascertain the date of 'maximum medical improvement.'." *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56, 60 (1985). A claimant's disability is permanent in nature if he has any residual disability after reaching maximum medical improvement (MMI). *James v. Pate Stevedoring Co.*, 22 BRBS 271, 274 (1989). The date of MMI is a question of fact based upon the medical evidence of record. *Williams v. General Dynamics Corp.*, 10 BRBS 915, 918 (1979). Under the second approach, a disability will be considered permanent if the claimant's impairment has continued for a lengthy period of time and appears to be of a lasting or indefinite duration, as distinguished from one in which recovery merely awaits a normal healing period. *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649, 654 (5th Cir. 1968), *cert. denied*, 394 U.S. 976 (1969).

In this case, the parties have stipulated that the Claimant reached a point of MMI on May 19, 2004, the date of Dr. Joyce's rating. Dr. Joyce's testimony that the Claimant continues to have a residual disability after reaching MMI on May 19, 2004 and that the Claimant's symptoms are not likely to improve supports a finding that the Claimant's impairment is of an indefinite duration. Further, the Claimant was assigned a permanent disability rating of 16 percent for his shoulder by Dr. Joyce upon attainment of MMI. Therefore, based on the Claimant's continuing disability despite reaching MMI, I find that the Claimant's disability has been permanent in nature since May 19, 2004.

2. Extent of Disability

The Claimant bears the initial burden of demonstrating an inability to return to his pre-injury job, which is defined as the regular duties he was performing at the time of a work-related injury. *Elliott v. C & P Telephone Co.*, 16 BRBS 89, 91 (1984); *Ramirez v. Vessel Jeanne Lou, Inc*., 14 BRBS 689, 693 (1982). If the Claimant meets this burden, he will be considered totally disabled, and the burden will shift to EB to prove the availability of suitable alternative employment in the Claimant's community. *American Stevedores, Inc. v. Salzano*, 538 F.2d 933, 935-936 (2d Cir.1976). To meet this production burden, EB "does not have to find an actual job offer for the claimant, but must merely establish the existence of jobs open in the claimant's community that he could compete for and realistically and likely secure." *Palombo v. Director, OWCP*, 937 F.2d 70, 74 (2d Cir. 1991) (*Palombo*), citing *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1042-1043 (5th Cir. 1981). If EB establishes the existence of suitable alternative employment, the Claimant may still prevail by showing that he diligently tried but was unsuccessful in obtaining the type of suitable alternative employment shown by EB to be available. *Palombo*, 937 F.2d at 73-74.

I must first address whether the Claimant has made a *prima facie* showing that he is unable to perform his former job because of the injury that he sustained on June 23, 1997. The Employer argues that Dr. Joyce, who was identified by the Claimant as the physician most familiar with his case, stated that the Claimant could return to his usual job. Emp. Br. at 4. In this regard, EB points out that the Claimant told Dr. Joyce in December 2003 that he was 80 to 90 percent better, and Dr. Joyce stated that he could be released to activities without restrictions and, specifically, no restrictions on lifting, pushing or pulling because of his shoulder injury. Emp. Br. at 4. However, in both his August 2003 and December 2003 reports, Dr. Joyce specifically noted that the Claimant had "not fully recovered" at that time. CX C at 6. In addition, Dr. Joyce stated in May 2004 that although the Claimant was 80 to 90 percent better, he continued to have pain with overhead activities. *Id.* at 2. Dr. Joyce gave the Claimant a permanent partial disability rating of 16 percent for his right upper extremity and stated that although the Claimant could return to his usual job, he could do so only with work restrictions that included lifting no more than 30 pounds overhead and repetitive lifting of no more than 80 pounds below shoulder level. *Id.* at 2-3. Dr. Gaccione issued similar restrictions and stated that the Claimant was capable of carrying out his duties as long as they involved restrictions limiting lifting to 25 pounds with no pulling or pushing greater than 50 pounds. CX B at 3. Mr. Ross, who as Manager of the Test Department is clearly more familiar with the physical demands of the Claimant's pre-injury job as a tester/grinder than Dr. Joyce, Dr. Gaccione or Mr. Donovan, testified that the Claimant could not return to work as a tank tester based upon the physical requirements of the tank tester position and Dr. Joyce's restrictions. Based on Dr. Joyce's restrictions and Mr. Ross's credited testimony regarding the physical demands of the tank tester position, I find that the Claimant has satisfied his *prima facie* burden of establishing that he is unable to return to his usual pre-injury employment as a tank tester because of his work-related shoulder injury.

EB next contends that based on Mr. Donovan's testimony to the effect that Dr. Joyce's restrictions could have been accommodated, the Claimant could return to his pre-injury position in Department 227 exclusively performing grinding work. Emp. Br at 6. However, Dr. Joyce's restrictions only relate to the Claimant's shoulder injury and do not address his work-related permanent hand and arm impairment. Regarding the Claimant's hands, Dr. Browning offered a reasoned medical opinion that given the Claimant's history of carpal tunnel syndrome with multiple surgeries, he should never use air-driven or vibrating tools, and Dr. Cherry similarly recommended that the Claimant should be permanently enjoined from ever using air-driven tools for other than very brief periods. TR 42-43. Dr. Wainwright, who conducted an evaluation at EB's request, also recommended permanent restrictions against any heavy, repetitive use of the hands which clearly contraindicate use of air-driven grinders that can weigh as much as 20 pounds and require hand pressure during operation. CX F at 5. Thus, the medical evidence of record demonstrates that the Claimant has, at best, a very limited ability to perform repetitive work using air-driven tools. For these reasons, EB's argument that the Claimant is physically able to return to his pre-injury job, regularly performing grinding rather than tank testing work, is rejected.

Since the Claimant has proved that he cannot return to his usual pre-injury employment, the burden then shifts to EB to demonstrate the existence of suitable jobs for which the Claimant could realistically compete. EB has not introduced any labor market evidence of suitable

alternative employment, but it argues that the Claimant's work activities for family members and his testimony that this type of work would typically pay between $12.00 and $15.00 per hour on the open market, establishes that he had a wage-earning capacity prior to securing gainful employment as a painter on November 1, 2004. Emp. Br. at 10. An employer can meet its burden to show suitable alternate employment "by showing a suitable job that the claimant actually performed after his injury." *Brooks v. Director, OWCP,* 2 F.3d 64, 65 (4th Cir. 1993). Further, the Benefits Review Board has held that even a part-time job may constitute suitable alternate employment. *Royce v. Elrich Construction Co*., 17 BRBS 157, 159 (1985). Thus, evidence that the Claimant performed a job satisfactorily and for pay, barring an indication of beneficence or extraordinary effort, will preclude an award of total disability. *Shoemaker v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 141, 145 (1980); *Walker v. Pacific Architects & Engineers, Inc.*, 1 BRBS 145, 147-148 (1974). In view of the absence of any evidence that the Claimant was compensated for any of the work that he performed prior to November 1, 2004, I find it reasonable to infer that the work was a product of family beneficence and does not represent competitive employment that would foreclose an award of total disability compensation.

Based on the foregoing, I conclude that EB has not met its burden of producing evidence that there was suitable alternate employment available to the Claimant prior to November 1, 2004 when he commenced employment as a painter with a stipulated earning capacity of $422.00 per week. Consequently, he is entitled to an award of permanent total disability compensation from May 19, 2004, the date of maximum medical improvement, until November 1, 2004 when he began working in suitable alternative employment. *Stevens v. Director, OWCP*, 909 F.2d 1256, 1259-1260 (9th Cir. 1990), *cert. denied*, 498 U.S. 1073 (1991). As of November 1, 2004, the Claimant's disability became partial when he commenced employment as a painter. *Rinaldi v. General Dynamics Corp.*, 25 BRBS 128, 131 (1991).

3. Effect of the Claimant's Post-Injury Layoff from EB

The Employer argues that since the Claimant's job was eliminated as part of an economic layoff in 1997 after his shoulder injury, he is precluded from claiming disability compensation as the evidence does not establish that his work-related injury is responsible for his loss of earnings. Emp. Br. at 9. That is, EB contends that any award of ongoing compensation would have the effect of putting the Claimant in a better position because of his injury than similarly situated employees who had the misfortune of not suffering a disabling injury. *Id.* EB cites no authority for this proposition which is directly at odds with the LHWCA's disability compensation scheme. The LHWCA "provides compensation not for the injury itself, but for the economic harm suffered as a result of the decreased ability to earn wages." *Norfolk Shipbuilding and Dry Dock Corp. v. Hord*, 193 F. 3d 797, 800 (4th Cir. 1999) ("*Hord*"), citing *Metropolitan Stevedore Co. v. Rambo*, 521 US 121, 126 (1997). "The fact that a claimant withdraws from the labor market following an injury, therefore, does not affect his or her entitlement to benefits where a loss in wage-earning capacity is established." *Hoopes v. Todd Shipyards Corp.,* 16 BRBS 160, 162 (1984), citing *Schenker v. The Washington Post*, 7 BRBS 34, 39 (1977). If the analysis of entitlement to benefits "focused on the reason why a claimant was no longer employed (*e.g.*, a layoff), claimants who have the misfortune of realizing their economic loss in the wake of an 'economic layoff' could not receive compensation for their actual loss of wage-earning ability." *Thompson v. Newport News Shipbuilding & Drydock Co.*, ALJ No. 1997-LHC-01164,1165,

1999 WL 744322, *6 (ALJ August 13, 1999). In order for a laid off claimant to establish a *prima facie* case for benefits, the claimant must show that he is unable to return to his pre-injury employment irrespective of the layoff. *Id*. at *7, citing *Forgich v. Norfolk Shipbuilding & Dry Dock Corp.*, 1998 WL 468834 (4th Cir.1998) (unpublished); *Newport News Shipbuilding & Dry Dock Co. v. Cole*, 1997 WL 457665 (4th Cir.1997) (unpublished); *Mendez v. National Steel & Shipbuilding Co.*, 21 BRBS 22 (1988); and *Ramirez v. Vessel Jeanne Lou*, 14 BRBS 689 (1982). Further, an employer's demonstration that the decision to layoff an injured employee is economic and nondiscriminatory in nature does not relieve the employer of its burden to show that the employee has the capacity to earn wages in suitable alternative employment that is reasonably available to the employee. *Hord*, 193 F. 3d at 801. Therefore, the fact that EB decided to eliminate the Claimant's position for economic reasons subsequent to the commencement of his disability as a result of his work-related shoulder injury of June 23, 1997 is irrelevant to his entitlement to ongoing disability compensation. This entitlement to benefits does not make the Claimant better off for having been injured, as EB argues. Rather it compensates the Claimant for his loss in wage earning capacity.

H. Compensation Due

As determined above, the Claimant is entitled to permanent total disability compensation from May 19, 2004 through October 31, 2004 and to permanent partial disability compensation commencing on November 1, 2004. Pursuant to section 8(a) of the LHWCA, the Claimant's compensation shall be two–thirds of his average weekly wages, which the parties have stipulated are $889.15, or $592.77 per week for the period of total disability. 33 U.S.C. § 908(a). Beginning on November 1, 2004 when he commenced suitable alternate employment as a painter, the Claimant's compensation entitlement converts to permanent partial which, pursuant to section 8(c)(21) of the LHWCA, is computed at two-thirds of the difference between the Claimant's average weekly wage and his wage earning capacity, which is established by stipulation at $422.00 per week, or $311.43 per week. 33 U.S.C. § 908(c)(21).

1. Concurrent Awards

The Claimant's entitlement to the periods of permanent total and permanent partial disability compensation is contemporaneous with the period of permanent partial disability compensation that he received at the rate of $619.90 per week until February 6, 2005 based on the work-related permanent loss of function of his hands and arms. EB argues that because the Claimant has already received compensation payments for the period ending on February 6, 2005 at the maximum two-thirds compensation rate, he is barred from recovering any additional compensation for the same period. Emp. Br. at 9. In EB's view, concurrent compensation is precluded based on the holding of the Court of Appeals for the Fourth Circuit that "in no case should the rate of compensation for a partial disability, or combination of partial disabilities, exceed that payable to the claimant in the event of total disability." Emp. Br. at 9, quoting *Green v. ITO Corp. of Baltimore*, 185 F.3d 239, 243 (4th Cir. 1999) (*Green*). EB contends that an award of concurrent payments to the Claimant would result in double recovery; therefore, under *Green*, the Claimant cannot recover any further compensation until, at a minimum, February 7, 2005, when the permanent partial disability compensation payments based on his hand and arm impairment ceased. Emp. Br. at 9-10.

The Board has held that a claimant may concurrently receive permanent partial benefits from a scheduled and non-scheduled award for separate work injuries. *Turney v. Bethlehem Steel Corp.*, 17 BRBS 232, 234 (1985). Likewise, if a claimant "suffers two distinct injuries, a scheduled injury and non-scheduled injury arising either from a single accident or multiple accidents, he may be entitled to receive compensation under both the schedule and Section 8(c)(21)." *Frye v. Potomac Electric Power Co.*, 21 BRBS 194, 198 (1988). While concurrent compensation awards are clearly permissible, *Green* and other cases have recognized the principle that the total of the concurrent payments cannot exceed the maximum weekly compensation rate for total disability. *Green*, 185 F.3d at 243. *See also Brady-Hamilton Stevedore Co. v. Director, OWCP (Anderson)*, 58 F.3d 419, 421-422 (9th Cir. 1995); *Hansen v. Container Stevedoring Co*., 31 BRBS 155, 158-159 (1997). However, this limit on the amount that a claimant can receive in concurrent weekly compensation payments does not require forfeiture of any compensation in excess of the maximum weekly rate. *Green*, 185 F.3d at 243. Instead, the ALJ is required to make whatever adjustments are necessary to avoid overpayment. *Padilla v. San Pedro Boat Works,* 34 BRBS 49, 53 (2000).

The Claimant received a schedule award of weekly permanent partial disability compensation payments of $619.90 through February 6, 2005, which is equal to two-thirds of his average weekly wage at the time of the hand and arm injury. Consistent with the case law that the total of concurrent payments may not exceed the maximum two-thirds compensation rate for a total disability, I find that the Claimant cannot receive any additional compensation payments during the period of the schedule award. As discussed above, the Claimant is entitled to permanent total disability compensation at the rate of $592.77 per week from May 19, 2004 through October 31, 2004, a period of 23 4/7 weeks, which totals $13,972.43. The Claimant is also entitled to permanent partial disability compensation at the rate of $311.43 per week from November 1, 2004 through February 6, 2005, a period of 14 weeks, which totals $4,360.02. Therefore, in order to prevent payment of compensation above the maximum rate for total disability while protecting the Claimant's statutory entitlement to full compensation, the Claimant's permanent partial disability compensation payments commencing on February 7, 2005 will be adjusted from $311.43 per week to the maximum rate of $592.77 per week, an increase of $281.34 per week, for a period of approximately 65.16 weeks.[2] Thereafter, the Claimant's permanent partial disability compensation payments will revert to the section 8(c)(23) rate of $311.43 per week.

2. Credit

Section 14(j) of the Act provides that "[i]f the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installment of compensation due." 33 U.S.C § 914(j). This provision allows the employer a credit for its prior payments of compensation against any compensation subsequently found to be due. *Balzer v. General Dynamics Corp.*, 22 BRBS 447, 451 (1989), *on recon., aff'd*, 23 BRBS 241 (1990);

[2] The total amount of permanent total and permanent partial disability compensation which cannot be paid to the Claimant during the period of May 19, 2004 through February 6, 2005 is $18,332.45. At the rate of $281.34 per week, which represents the difference between the section 8(c)(23) rate of $311.43 per week and the two-thirds total disability compensation rate of $592.77, it will take 65.16 weeks to reach the total of $18,332.45.

Mason v. Baltimore Stevedoring Co., 22 BRBS 413, 415 (1989).

The parties have stipulated that a credit is due EB for advance payments made to the Claimant for his work-related shoulder injury. Although counsel for the Claimant stated at the hearing that he wished to reserve a right to dispute the claimed credit amount of $15,096.31, the Claimant states in his brief that the parties agree that EB is entitled to a credit of $15,096.31. Cl. Br. at 6. Therefore, I will accept $15,096.31 as the amount of credit due EB.

3. Interest

The Claimant is due interest on any compensation that was not timely paid. *See also Foundation Constructors v. Director, OWCP*, 950 F.2d 621, 625 (9th Cir.1991) (noting that "a dollar tomorrow is not worth as much as a dollar today" in authorizing interest awards as consistent with the remedial purposes of the Act); *Quave v. Progress Marine*, 912 F.2d 798, 801 (5th Cir.1990), *reh'g denied* 921 F. 2d 273 (1990), *cert. denied*, 500 U.S. 916 (1991). The appropriate interest rate shall be determined pursuant to 28 U.S.C. § 1961 (2003) as of the filing date of this Decision and Order with the District Director.

I. Attorney's Fees

The Claimant, having utilized an attorney to successfully establish his right to additional compensation, is entitled to an award of attorney's fees under section 28 of the LHWCA. *See American Stevedores v. Salzano*, 538 F.2d 933, 937 (2nd Cir. 1976). In my order, I will allow the Claimant's attorney 30 days from the date this decision and order is filed with the District Director to file a fully supported and fully itemized fee petition as required by 20 C.F.R. § 702.132 (2004), and EB will be granted 15 days from the filing of the fee petition to file any objection.

III. Order

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the entire record, the following compensation order is entered:

1. Commencing on February 7, 2005 and continuing thereafter for a period of 65.16 weeks, the Employer, Electric Boat Corporation, shall pay directly to the Claimant, Harold E. Chieka, permanent partial disability compensation at the rate of $592.77 per week, plus interest on any such payments not timely made at a rate to be determined pursuant to 28 U.S.C. § 1963 (2003);

2. Commencing immediately upon completion of the 65.16 week period running from February 7, 2005, and continuing thereafter until further order, Electric Boat Corporation shall pay directly to Harold E. Chieka permanent partial disability compensation at the rate of $311.43 per week, plus interest on any such payments not timely made at a rate to be determined pursuant to 28 U.S.C. § 1963 (2003);

3. The Electric Boat Corporation is entitled to a credit for payments previously made in the amount of $15,096.31, pursuant to 33 U.S.C § 914(j);

4. The Electric Boat Corporation shall provide Harold E. Chieka with such reasonable, appropriate and necessary medical care and treatment as the Claimant's work-related shoulder injury may require pursuant to 33 U.S.C. § 907;

5. The Claimant's attorney shall have 30 days from the date this Decision and Order is filed with the District Director to file a fully supported and fully itemized fee petition as required by 20 C.F.R. § 702.132 (2004), and the Employer shall have 15 days from the filing of the fee petition to file any objection; and

6. All computations of benefits and other calculations which may be provided for in this Order are subject to verification and adjustment by the District Director.

SO ORDERED.

A

DANIEL F. SUTTON
Administrative Law Judge

Boston, Massachusetts